## Thinking point 13.1

A decides to hold a party at his house. In the course of the evening, A is told that in the upstairs bedroom a guest, P, is about to assault another guest, V, who is the worse for drink. A decides to do nothing. P assaults V. Is A an accessory to assault?

* This will depend upon whether A has a duty to act (see Chapter 2)
* If so, does the failure to intervene amount to encouragement? (*Russell v Russell*)

## Thinking point 13.2

1. V has been shot and killed by either P or A, but the prosecution cannot prove which of the two pulled the trigger and which one hired the other as hitman. What offence has each committed, if any?

* *Gianetto* [1997] 1 Cr App R 1: both will be convicted of murder. The mode of participation is irrelevant provided there is evidence against both as either accessory or a principal.

1. Which of the following represents either aiding or abetting by A and for which offence will A be liable?
2. P tells A that he plans to murder V. A says that is a very good idea. P kills V the following week.

* Abetting: encouragement. Guilty of murder.

1. A finds P violently kicking V in the head. A shouts encouragement, smashes a bottle, hands it to P and then leaves the scene. P continues the attack with the bottle. V dies.

* Aiding: assisting by handing P a bottle.
* Abetting: encouragement. A intended their shouting to encourage P knowing that P was committing an offence.
* If A intended to aid or abet, A will be liable for murder.

## Thinking point 13.3

Which of the following represents either counselling or procuring by A and for which offence will A be liable?

1. A generous host (A) gives too much alcohol to a guest (P):

a. hoping, wrongly, that P will be sensible enough to stay the night and not drive home;

b. knowing P must drive home.

In each case P is stopped, charged and convicted of driving with excess alcohol.

* In (a), A was reckless. This is insufficient for procuring: *Blakely & Sutton v CC of West Mercia*.
* In (b), A intentionally caused P’s offence. A is guilty of procuring driving with excess alcohol.

1. A emails P information about the security system of a shop which P wishes to burgle, on the basis of which P attempts the burglary but is arrested on site.

* A has counselled P’s offence of burglary: contact is necessary, but presence is not.

1. A asks P, a 9-year-old child, to slip through a narrow window of a house and to unlock the front door from the inside so that A can enter in order to steal.

* P is an innocent agent. A thus becomes principal offender to burglary.

## Thinking point 13.4

A sells P a knife which A realises P might use to inflict serious harm. P uses the knife to kill. What offence has A committed?

* For A to be an accessory, it must be proved that:
  + A intends to do the act which assists/encourages
  + A intends the act to assist/encourage P (*Gamble*)
  + Intention requires knowledge, but not purpose, that an offence might be committed (see *Gillick*)
  + It also requires knowledge that the act is capable of assisting (*Bryce*).
* If all four are proved, A is accessory to murder even though they only knew of a risk of GBH.

## Thinking point 13.5

A lends P tools for a burglary. P keeps the tools and uses them for 20 other burglaries. Is A an accomplice to all?

A lends P a gun with which to kill V that evening. P uses the gun as expected. The following month P uses it to kill two police officers whilst resisting arrest. Is A an accomplice to all three murders?

* Since the type of offence was in A’s contemplation, it seems that they will be liable for the additional offences.
* In the first scenario, all 21 offences are very similar. In the second, the later killings are different to the first; but the test for ‘type of offence’ is a broad one: *Maxwell v DPP for NI*.
* Do you think it would be right for A to be liable for the additional offences?

## Thinking point 13.6

1. A sells P a gun believing that P will use it to kill. P uses it to kill on several subsequent occasions. Is A liable for all murders?

* Yes, because A knows the particular offence P intends to commit. This was also the situation in Thinking point 13.5.

1. A sells P an iron bar believing that P will use it in a burglary or robbery. P uses it to commit murder. Is A liable?

* No: this is not a type of offence contemplated by A.

1. A lends P a crowbar for a burglary knowing that there is a risk that P might use it to attack the occupier (V) if P is disturbed. P is disturbed during the burglary and hits V around the head causing serious injury from which V then dies.

* P will be guilty of murder as principal.
* A will be guilty of murder as accessory because they intended to assist/encourage P to commit the principal offence knowing that P might intentionally inflict GBH or kill.

## Thinking point 13.7

Which of the above categories, 1–3 applies to the following?

1. A, an adult, procures X, aged 9, to commit a burglary.

* (2). A has procured the offence. X is an innocent agent, but A remains liable as the procurer to burglary.

1. P is threatened with violence by A unless he injures V.

* (1). P has a defence of duress. A will be guilty of the assault.

## Thinking point 13.8

Will the defence of withdrawal succeed in the following?

1. A initially participates in the joint ventures below. They then decide that they have had enough and slope off without attracting P’s attention in:
2. a planned joint violent attack on V;

* It is unlikely that this will provide a defence of withdrawal. In a planned enterprise, withdrawal must be timely, unequivocal and effective: eg *Whitehouse, Becerra & Cooper*.

1. a spontaneous joint violent attack on V.

* Older authority (*Mitchell* 1999) suggests communication is not required in spontaneous ventures.
* However, later cases (*Robinson* etc) take a stricter approach. Therefore, there is unlikely to be a defence here.

1. In a joint violent attack, A offers encouragement by shouting, ‘Hit him P’. Five minutes later she tries to protect V who is on the ground.

* *Robinson* suggests an attempt to protect V may signify withdrawal.
* However, it is a matter of fact for the jury to decide.